

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

STATE OF DELAWARE)	
)	
v.)	I.D. # 92008406DI
)	
DAVID F. LEE,)	
)	
Defendant)	
)	

Submitted: May 16, 2006
Decided: August 2, 2006

Upon Defendant's Second Motion for Postconviction Relief.
SUMMARILY DISMISSED.

ORDER

Marsha J. White, Esquire, Deputy Attorney General, Department of Justice,
Wilmington, Delaware, Attorney for the State.

David F. Lee, Georgetown, Delaware, *pro se*.

COOCH, J.

This 2nd day of August, 2006, upon consideration of Defendant's
second motion for postconviction relief, it appears to the Court that:

1. David F. Lee ("Defendant") was arrested on September 5, 1992, and charged with Unlawful Sexual Intercourse First Degree (ID # 92008406DI). On February 18, 1993, Defendant pled guilty to the lesser included offense

of Unlawful Sexual Intercourse Third Degree. Then, on April 16, 1993, Defendant was sentenced to 5 years at Level V, suspended after 2 years, followed by 3 years at Level II. On May 19, 1993, Defendant filed a timely motion for postconviction relief, which was summarily dismissed by this Court on August 13, 1993.¹ On December 30, 1993, the Delaware Supreme Court affirmed.² In March 1996, Defendant was arrested and later charged in another indictment (ID# 9603005083) on the charges of Forgery Second Degree and Attempted Escape After Conviction. On March 12, 1997, after a jury trial, Defendant was found guilty on both charges. Defendant was sentenced on April 11, 1997, to 1 year at Level V, suspended to 1 year at Level II, for the Forgery Second Degree charge, and sentenced to 2 years at Level V, suspended for time served for 1 year at Level III for Attempted Escape After Conviction. Then, on June 6, 2005, Defendant was found to be in violation of probation for (1) a previous violation of probation, and sentenced to 1 year at Level V, (2) the probation imposed for the Forgery Second Degree conviction and sentenced to 1 year at Level V, followed by

¹ *State v. Lee*, Del. Super., ID No. 92008406DI, Cooch, J. (Aug. 13, 1993) (ORDER) (summarily dismissing motion for postconviction relief pursuant to Superior Court Criminal Rule 61(d)(4)). It should be noted that there is no record of Defendant having filed a motion for postconviction relief as to Criminal ID # 9603005083.

² *Lee v. State*, 1993 WL 557935 (Del. Supr.) (affirming order summarily dismissing defendant's motion for postconviction relief as the issues of law are "clearly ... controlled by settled Delaware law").

decreasing levels of supervision, and (3) for the probation imposed for the Attempted Escape After Conviction conviction, for which Defendant was discharged as unimproved. Subsequent to the sentencing, Defendant filed two motions for modification of sentence, both of which were denied.³

2. Defendant filed this motion for postconviction relief pursuant to Superior Court Criminal Rule 61 on May 16, 2006. Defendant sets forth three claims in support of his motion, which are recreated here, *in toto*:

1. Right to Effective Counsel

Counsel did not instruct Civilly, Socially, financially, Legally etc [sic] as in accord with Rules of Professional Conduct, Never had a Psychological evaluation [sic].

2. unfulfilled and uninformed Plea [sic]

At Time of Plea entrance I was not told I would be required to Register, or that I would be harassed. Registration and MDT [sic] did not exist.

3. Due Process

I had to make a Case on the fly with what I had which was not sufficient to compete effectively, or the Reality of Unusual Punishment.

If any of the grounds listed were not previously raised, state briefly what grounds were not raised, and give your reasons(s) for not doing so:

Lack of Education (formal Education Concerning Preparation, Presentation of a Case and enlarging and expounding meritorious and Colorful claims. not to mention Resources and Connections [sic].

No further facts or any legal authorities were set forth. In whatever space was available to the Defendant in the margins of the form motion for postconviction relief, Defendant wrote “A Letter To My Judge,” which apparently was meant to inform this Court about Defendant’s feelings about

³ *State v. Lee*, Del. Super., ID No. 9603005083, Gebelein, J. (Aug. 18, 2005) (ORDER); *State v. Lee*, Del. Super., ID No. 9603005083, Scott, J. (May 11, 2006) (ORDER).

his convictions and any progress that Defendant has made while incarcerated. Upon review of Defendant's motion, it is plain that Defendant is not entitled to relief as all of the above grounds are conclusory. Thus, the motion is **SUMMARILY DISMISSED**.

3. Superior Court Criminal Rule 61(d)(4) provides that "[i]f it plainly appears from the motion for postconviction relief and the record of prior proceedings in this case that the movant is not entitled to relief, the judge may enter an order for its summary dismissal and cause the movant to be notified." Defendant's motion for postconviction relief will be summarily dismissed where no facts supporting Defendant's contentions are offered and the claims are conclusory.⁴

4. It is plain from the motion and the record that none of Defendant's claims entitle him to relief as they are all conclusory. First, Defendant merely makes a blanket allegation of ineffective assistance of counsel. He does not create any factual basis or provide any legal framework for the claim. Thus, Defendant's claim of ineffective assistance of counsel is

⁴ *State v. Cooper*, 2001 WL 1729147 (Del. Super.) (summarily dismissing defendant's claims of false testimony and ineffective assistance of counsel as defendant did not offer supporting facts and the claims were conclusory). *See also Jordan v. State*, 1994 WL 466142 (Del. Supr.); *State v. Brittingham*, 1994 WL 750341, * 2 (Del. Super.) (citing *Younger v. State*, 580 A.2d at 556 (holding that conclusory allegations are legally insufficient to prove ineffective assistance of counsel)).

conclusory.⁵ Second, Defendant's claim that his plea was "uninformed" is not supported by any facts cited by Defendant or found in the record by this Court. Thus, it is also conclusory. Likewise, Defendant's due process claim is conclusory as it is unsubstantiated by any factual or legal support. Finally, the fact that Defendant did not have sufficient education to completely understand the legal process is not enough to grant the relief requested.

5. A separate and independent ground for the denial of Defendant's motion can be found in the procedural bar of Rule 61(i)(1). Rule 61(i)(1) provides that "a motion for postconviction relief may not be filed more than three years after the judgment of conviction is final..."⁶ The procedural bar of Rule 61(i)(1) can potentially be overcome by Rule 61(i)(5), which provides that "[t]he bar[] to relief in paragraph[] ... (1) ... shall not apply to a colorable claim that there was a miscarriage of justice because of a constitutional violation that undermines the fundamental legality, reliability, integrity or fairness of the proceedings leading to the judgment of conviction." This "fundamental fairness" exception contained in Rule 61(i)(5) is "a narrow one and has been applied only in limited circumstances,

⁵ *Jordan v. State*, 1994 WL 466142 (Del. Supr.); *State v. Brittingham*, 1994 WL 750341, * 2 (Del. Super.) (citing *Younger v. State*, 580 A.2d at 556 (holding that conclusory allegations are legally insufficient to prove ineffective assistance of counsel)).

⁶ Effective July 1, 2005, the period within which to bring Rule 61 petitions is changed to a one-year limitation from the previous three-year limitation.

such as when the right relied upon has been recognized for the first time after [a] direct appeal.”⁷ Here, Defendant’s motion is filed well beyond the three-year time period mandated by Rule 61(i)(1). Moreover, Defendant has not alleged any facts in support of the “fundamental fairness” exception of Rule 61(i)(5). Therefore, Defendant’s motion must be dismissed.

6. All of Defendant’s claims are unsupported by facts or law and, therefore, it is plain on the face of the record that Defendant is not entitled to relief. Defendant’s motion is **SUMMARILY DISMISSED**.

IT IS SO ORDERED.

Richard R. Cooch, J.

oc: Prothonotary
cc: Investigative Services
Edward C. Pankowski, Jr., Esquire
James R. Lally, Esquire

⁷ *Younger*, 580 A.2d at 555.